

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: WILLIAM McNOVA HOWARD, JR.
ARKANSAS BAR ID# 87087
CPC DOCKET NO. 2009-061

FILED

SEP 29 2009

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided by the Arkansas Supreme Court in a referral from *Marcus D. Young v. State of Arkansas*, Arkansas Supreme Court Case No. CR07-628. The conduct referred to the Committee related to the representation of Marcus Young by William McNova Howard, Jr., Attorney at Law, Pine Bluff, Arkansas. The representation of Mr. Young started prior to 2007 and continued through 2009.

A hearing in this matter was requested by Mr. Howard, and the matter was heard on September 18, 2009, before Panel A of the Committee on Professional Conduct. The hearing was conducted by Panel A Chair Steven Shults and Panel A members Elaine Dumas, Helen Herr, Gwendolyn Hodge, Jerry Pinson and T. Benton Smith. Panel A member Win Trafford of Pine Bluff recused from the matter, and L. Scott Stafford of Little Rock served as a substitute panel member.

The Office of Professional Conduct was represented by Michael E. Harmon, Senior Staff Attorney. Mr. Howard represented himself in the proceeding.

Opening statements were made by the Office of Professional Conduct and by Mr. Howard. Following opening statements, the Office of Professional Conduct presented its case in chief.

The Office of Professional Conduct presented to the Panel the Motion for Rule on the Clerk filed by Mr. Howard and the Court's *Per Curiam* referral to the Committee on Professional Conduct.

The information presented by the Office of Professional Conduct demonstrated that on April 3, 2007, the Drew County Circuit Court dismissed a Rule 37 Petition filed by Mr. Howard on behalf of his client, Marcus Young. April 3, 2007, became the starting point for various time deadlines.

In a previous disciplinary matter, *In re: William McNova Howard, Jr.*, Committee on Professional Conduct Case No. 2008-036, Panel A considered conduct also arising out of the Marcus Young appeal. In that matter, Mr. Howard filed a Motion for Reconsideration on May 1, 2007, following the April 3, 2007, denial of the Rule 37 Petition. The Drew County Circuit Court did not rule on the Motion for Reconsideration and it was deemed denied. On June 6, 2007, Mr. Howard filed a Notice of Appeal. After several extensions of time, the matter was tendered to the Arkansas Supreme Court Clerk, who rejected the brief as non-compliant. Mr. Howard filed a Motion for Belated Brief, the Arkansas Supreme Court granted the motion on January 24, 2008, and referred the matter to the Committee on Professional Conduct. The State of Arkansas filed a Motion to Dismiss Appeal as the notice of appeal had not been filed within thirty days of the April 3, 2007, Order denying the Petition for Rule 37. The Arkansas Supreme Court agreed and issued a *Per Curiam* Order dismissing the appeal. The disciplinary matter became final on December 29, 2008, and Mr. Howard was issued a Reprimand sanction, a fine of \$1,000, and costs.

On December 19, 2008, Mr. Howard filed a Motion for Rule on the Clerk in the case of

Marcus D. Young v. State of Arkansas, Arkansas Supreme Court Case No. CR2007-628. The Arkansas Supreme Court entered a *Per Curiam* Order on January 15, 2009, wherein it stated that Mr. Howard had filed a Motion for Rule on the Clerk but the correct motion would be a Motion for Belated Appeal. The Court then treated Mr. Howard's motion as a Motion for Belated Appeal. The Court then examined Rule 2(e) of the Arkansas Rules of Appellate Procedure-Criminal, which states that "...no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken." As the order denying Mr. Young's Petition for Rule 37 Relief was filed on April 3, 2007, and Mr. Howard's Motion for Rule on the Clerk was not filed until December 19, 2008, the filing was untimely as it was filed beyond the eighteen-month period as set forth in Rule 2(e). The Motion for Belated Appeal was then denied and the matter was referred to the Committee on Professional Conduct.

The Office of Professional Conduct then rested.

Mr. Howard then presented his testimony. Mr. Howard stated that he had spoken to Mr. Young's mother who asked what could be done for her son, Marcus. Mr. Howard stated he thereafter filed a Rule 37 Petition. Following the filing of the Rule 37 Petition, the Drew County Circuit Court dismissed the Rule 37 Petition. Mr. Howard stated that he filed a Motion for Reconsideration and a Notice of Appeal. The appeal was dismissed by the Arkansas Supreme Court. Thereafter, Mr. Howard stated, he had another conversation with Marcus Young's mother, who again asked what could be done for Marcus.

Mr. Howard stated that he consulted with another attorney who advised him that he

should file a Motion for Rule on the Clerk. On December 19, 2008, Mr. Howard filed a Motion for Rule on the Clerk. Mr. Howard testified that he believed that the time to file a notice of appeal from a Rule 37 Proceeding was tolled when he filed a motion to reconsider. Because it was not, he missed the deadline to file a timely notice of appeal. By filing the Motion for Rule on the Clerk, Mr. Howard stated that he accepted responsibility for failing to file a timely notice of appeal and he believed that his admission would allow the Motion for Rule on the Clerk to be granted. Mr. Howard stated that the Court treated the Motion for Rule on the Clerk as a Motion for Belated Appeal, and that was not what he filed. Mr. Howard testified that the reason he filed the Motion for Rule on the Clerk was so that he could exhaust all state remedies and get the matter brought into federal court. Mr. Howard stated that he had not, as of the date of the hearing, filed anything on behalf of his client in federal court.

Mr. Howard stated that he had already been punished in the matter and had already been fined. Mr. Howard stated that his office was a bit chaotic but that he was making changes.

On cross-examination, Mr. Howard was questioned about having been already punished in this matter. Mr. Howard stated that the prior discipline must have been the case of *In Re: William McNova Howard, Jr.*, Committee on Professional Conduct Case No. 2008-036. Mr. Howard admitted that he was reprimanded in that matter and fined the sum of \$1,000. Mr. Howard stated that the prior disciplinary case was final on December 29, 2008. Mr. Howard admitted that the instant disciplinary case arose by the referral of the Court's *Per Curiam* Order of January 15, 2009.

Mr. Howard was then questioned about his attempts to rectify future violations as stated in Paragraph 9 of his Response to the Office of Professional Conduct's formal complaint. Mr.

Howard was asked whether he remembered testifying before the Panel on May 16, 2008, in a different disciplinary matter, Committee on Professional Conduct Case No. 2007-131. At that hearing, Mr. Howard was asked whether he had thought about changes in the way he practiced law. Mr. Howard stated in May 2008 that he was making changes. Mr Howard testified in 2008 that he was trying to bring his daughter in to help him but was trying to get his office tidied up a bit before bringing her in, rather than bringing her into a mess. Mr. Howard stated that he did not have anybody working for him and that he had not brought his daughter in to work for him.

It was also brought to Mr. Howard's attention that he testified in May of 2008 that he was seriously thinking about not doing any more appeals because that is where he gets in trouble. When asked about that statement, Mr. Howard stated he currently had three or four appeals pending before the appellate courts. Mr. Howard stated that over his years of practice, he had probably represented individuals in fifty or so criminal appeals.

Also in May of 2008, Mr. Howard was asked whether he intended to withdraw from practicing in the area of criminal appeals. Mr. Howard's testimony in 2008 was that the only time he got in trouble was when he did criminal appeals and that he was strongly considering withdrawing from appeals. Mr. Howard stated in 2008 that he would have to think real hard before doing another appeal.

The Office of Professional Conduct and Mr. Howard then presented closing arguments.

Following presentation of the testimony and evidence in the case, the Office of Professional Conduct presented to the Panel an envelope and its contents as described in Section 7.G of the Procedures.

The Committee then went into executive session to deliberate.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the testimony presented, the prior disciplinary history, and other matters before it, and the

Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds, by unanimous vote unless otherwise indicated:

1. William McNova Howard, Jr., violated Rule 1.1 of the Arkansas Rules of Professional Conduct when he failed to demonstrate competent representation to his client, Marcus Young, when he failed to file a Motion for Belated Appeal within eighteen months of the April 3, 2007, denial of the Petition for Rule 37 Relief. Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Panel member Gwendolyn Hodge voted to find that this rule was not violated as alleged.

2. William McNova Howard, Jr., violated Rule 1.3 of the Arkansas Rules of Professional Conduct when he failed to file a Motion for Belated Appeal within eighteen months of the trial court's April 3, 2007, denial of the Petition for Rule 37 Relief in the case of *State of Arkansas v. Marcus Young*, Drew County Circuit Court Case No. CR2003-184-3. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. William McNova Howard, Jr., did not violate Rule 3.4(c) as alleged in the complaint. Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. Panel member Helen Herr voted to find that this rule was violated as alleged.

4. William McNova Howard, Jr., violated Rule 8.4(d) of the Arkansas Rules of Professional Conduct when his failure to file a timely Motion for Belated Appeal on behalf of his client, Marcus Young, resulted in a delay in the orderly and timely resolution of appeal proceedings. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice. Panel member Gwendolyn Hodge voted to find that this rule was not violated as alleged.

5. William McNova Howard, Jr., violated Rule 8.4(d) of the Arkansas Rules of Professional Conduct when his failure to file a timely Motion for Belated Appeal on behalf of his client, Marcus Young, resulted in his client's appeal being dismissed for a second time. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice. Panel members Gwendolyn Hodge and L. Scott Stafford voted to find that this rule was not violated as alleged in this allegation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that the conduct involved herein is "serious misconduct" under Section 17B.5 warranting a sanction terminating or restricting a lawyer's license to practice law, as WILLIAM McNOVA HOWARD, JR. has been sanctioned by the Committee on Professional Conduct on eleven previous occasions, all involving criminal appeals. Therefore, it is the decision of the Panel that WILLIAM McNOVA HOWARD, JR., Arkansas Bar No. 87087, be SUSPENDED from the practice of law for a period of FOUR (4) MONTHS, with the suspension withheld, as provided below, unless and until a further order is entered ordering that the suspension commence, that he is assessed costs in the amount of ONE HUNDRED FIFTY DOLLARS (\$150.00), including an administrative fee of FIFTY DOLLARS (\$50.00) and the court reporter's fee of ONE HUNDRED DOLLARS (\$100.00) for his conduct in this matter. The costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

The imposition of the FOUR-MONTH SUSPENSION is withheld on the condition that Mr. Howard agree to a one-year probationary period, pursuant to Section 17.E(7). The terms and conditions shall be in writing and acknowledged by Mr. Howard. Mr. Howard

shall be placed under the supervised probation of another lawyer, who is to be approved by the Office of Professional Conduct. The supervising lawyer shall supervise, monitor, and assist the lawyer as required to fulfill the conditions of probation. Probation shall be terminated upon the filing of an affidavit by Mr. Howard showing compliance with the conditions and an affidavit by the supervising lawyer stating probation is no longer necessary and summarizing the basis for that statement. Willful or unjustified non-compliance with the conditions of probation will terminate the probation and could subject Mr. Howard to further disciplinary action, to include imposition of a more severe sanction which could have been imposed originally but for the agreement to probation. **Mr. Howard shall notify the Office of Professional Conduct that he is agreeable to the probationary period and shall provide the name of an attorney who will agree to be the supervising attorney. The probationary agreement, conditions and assent from the supervising attorney shall be in place no later than October 19, 2009.** The Office of Professional Conduct is directed to report to the Panel A Chair not later than October 21, 2009, whether the probationary arrangements have been made.

Panel members L. Scott Stafford, Gwendolyn Hodge, T. Benton Smith, and Elaine Dumas voted in favor of the proposal to withhold imposition of all four months of the suspension, with a one-year probationary period. Panel members Jerry Pinson, Helen Herr, and Steven Shults voted to withhold the imposition of only three of the four-month suspension, with a one-year probationary period.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: September 29, 2009